

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

***Return Date: July 26, 2018***

***Time: 9:30 a.m.***

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In re:

MARK TRICARICO

Chapter 13

Case No.: 18-73255-736

Debtor(s)

**NOTICE OF MOTION**

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SIRS / MADAMS

**PLEASE TAKE NOTICE**, that MICHAEL J. MACCO, Chapter 13 Trustee of the above captioned estate, will move before the Honorable Robert E. Grossman, United States Bankruptcy Judge on the 26th day of JULY, 2018 at 9:30 a.m., at the United States Bankruptcy Court located at the Alfonse M. D'Amato U.S. Courthouse, 290 Federal Plaza – Courtroom 860, Central Islip, New York 11722, for an Order pursuant to 11 U.S.C. §§§§ 109(g), 521, & 1307(c), dismissing this case with prejudice, prohibiting the debtor(s) from filing another petition under Chapter 13 or converting a Chapter 7 to Chapter 13 for a period of one hundred eighty (180) days, by reason of the debtor(s)' failure to submit monthly pre-confirmation payments, failure to provide and/or file documents, failure to appear and/or be examined at §341 meeting of creditors, and for such other and further relief as this Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, that answering papers, if any, shall be filed with the Court and served upon the undersigned no later than three (3) days prior to the return date of this motion.

Dated: Islandia, New York  
July 5, 2018

Yours, etc.

MICHAEL J. MACCO  
Chapter 13 Trustee  
2950 Express Drive South, Suite 109  
Islandia, New York 11749  
(631) 549-7900

To: *Office of the United States Trustee*  
*MARK TRICARICO, Debtor(s)*  
*ANTHONY M. VASSALLO, ESQ., Attorney for Debtor(s)*  
*All Interested Parties and Creditors*

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

**tmm1634**

MARK TRICARICO

Chapter 13  
Case No.: 18-73255-736

Debtor(s)

**APPLICATION**

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TO THE HONORABLE ROBERT E. GROSSMAN, UNITED STATES BANKRUPTCY JUDGE:

MICHAEL J. MACCO, Chapter 13 Trustee in the above captioned estate, respectfully represents as follows:

1. The debtor(s) filed a Chapter 13 petition under the provisions of 11 U.S.C., on May 12, 2018, and thereafter MICHAEL J. MACCO was duly appointed and has qualified as Trustee.
2. Upon information and belief, this is the fourth petition for relief filed by the debtor(s), under Chapter 13, dating back to January 6, 2009.
3. The first petition was filed by the debtor(s) under case number 8-09-70039-736, on January 6, 2009. The debtor's Chapter 13 case was dismissed upon application of the Trustee on March 13, 2009. The second petition was filed by the debtor(s) under case number 8-17-77296-736, on September 15, 2017. The debtor's Chapter 13 case was automatically dismissed by the court on October 31, 2017. The third petition was filed by the debtor(s) under case number 8-18-70999-736, on February 15, 2018. The debtor's Chapter 13 case was automatically dismissed by the court on April 2, 2018.
4. As of the date of this motion, the debtor(s) has failed to submit any monthly pre-confirmation payments to the Trustee.
5. In addition, as of this date the debtor(s) has failed to file and/or provide to the Trustee, a Chapter 13 Plan; copies of paystubs for recent pay period including the last sixty (60) days; Personal and Corporate State and Federal Tax Returns for 2017; written appraisal for property; list of business assets and their fair market value including outstanding Accounts Receivable; and Operating Reports.
6. Furthermore, as of this date the debtor has failed to provide the Trustee with all filings required under Section 521; and all mandatory disclosure documentation as set forth in Local Bankruptcy Rule 2003-1.
7. Moreover, the debtor failed to appear and/or be examined at the initial §341 meeting of creditors, held on June 18, 2018 at 11:00 a.m.
8. This appears to be nothing more than another filing for the sole purpose of obtaining the rights and benefits of the Automatic Stay, as provided in 11 U.S.C. §362.
9. This is a material default and is prejudicial to the rights of the creditors of the debtor(s).

**WHEREFORE**, the Trustee requests an Order pursuant to the provisions of 11 U.S.C. §§§ 109(g), 521, & 1307(c), dismissing this case with prejudice, prohibiting the debtor(s) from filing another petition under Chapter 13 or converting a Chapter 7 to Chapter 13 for a period of period of one hundred eighty (180) days, and for such other and further relief as this Court deems just and proper.

Dated: Islandia, New York  
July 5, 2018

/s/ **Michael J. Macco**

Michael J. Macco, Chapter 13 Trustee  
2950 Express Drive South, Suite 109  
Islandia, New York 11749  
(631) 549-7900

STATE OF NEW YORK     )  
COUNTY OF SUFFOLK    )     ss.:

STEPHANIE TURNER, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age, and resides in Suffolk County, New York.

On July 5, 2018 deponent served the within:

**NOTICE OF MOTION AND APPLICATION**

upon the following parties, at the addresses designated by said parties for that purpose, by depositing a true copy of same, enclosed in a post-paid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

**Mark Tricarico**  
4 Windsor Court  
Coram, NY 11727  
*Debtor(s)*

and upon the following parties, by the e-mail address designated by said parties for that purpose;

*Office of the United States Trustee*  
*Alfonse M. D'Amato U.S. Courthouse*  
[USTPRegion02.LI.ECF@usdoj.gov](mailto:USTPRegion02.LI.ECF@usdoj.gov)

**Anthony M. Vassallo, Esq.**  
Law Office of Anthony M. Vassallo  
[amvassallo@gmail.com](mailto:amvassallo@gmail.com)  
*Attorney for Debtor(s)*

**/s/Stephanie Turner**  
STEPHANIE TURNER

Sworn to before me this  
5<sup>th</sup> day of JULY, 2018

**/s/ Janine M. Zarrilli**  
NOTARY PUBLIC  
Janine M. Zarrilli  
Notary Public, State of New York  
No. 01ZA5084708  
Qualified in Nassau County  
Commission Expires September 8, 2021